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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,069	08/26/2003	Neelima Atluri	NAI001	3378

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TOPE-MCKAY & ASSOCIATES
23852 PACIFIC COAST HIGHWAY #311
MALIBU, CA 90265

EXAMINER

SILBERMANN, JOANNE

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 01/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/648,069

Applicant(s)

ATLURI

Examiner

Joanne Silbermann

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 5, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Schutten, US #6,575,297.

3. Schutten discloses an illustrative drug card comprising illustrative portion 32 and visually aided instruction 14. The display is foldable. Regarding claims 1 and 5, illustrative portion 32 includes list represented by an illustration of each medication, wherein the illustration is a pouch (Figure 1). Allergies and contact information are also included (Figure 1). The information (once written) in area 14 is considered to be “visual” since it can be seen. Additionally, Applicant’s specification describes the visually aided instruction as text or symbols (page 6).

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 4, 6-9, 12 and 14-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schutten.

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3. Schutten does not specifically teach a picture of the medication, however, this is considered to be an equivalent alternative. It would have been obvious to one of ordinary skill in the art to show a picture of the medication instead of a sample as an alternate way of portraying the medication.

4. Regarding claims 6-9, Schutten does not particularly teach symbols, however, this is considered to be a matter of design choice. It would have been obvious to one of ordinary skill in the art to display whatever information is deemed necessary for the patient. Also, patentable novelty cannot be principally predicated on mere printed matter and arrangements thereof, but must reside basically in physical structure. In re Montgomery, 102 USPQ 248 (CCPA 1954).

5. Claims 3, 23-30 and 32-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schutten in view of Stern, US #4,310,978.

6. Schutten does not teach the card as being magnetic, however, this is well known in the art of cards. Stern teaches an information card including a magnetic layer (Figure 4). It would have been obvious to one of ordinary skill to utilize a magnetic layer in the device of Schutten so that the card may be displayed on a magnetic surface where it may be more easily seen.

7. Claims 13 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schutten in view of Will, US #4,593,819.

8. Schutten does not teach using Braille, however, this is well known in the art. Will teaches a medical chart including Braille thereon (Figure 2). It would have been

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obvious to one of ordinary skill in the art to utilize Braille on the device of Schutten so that visually impaired patients may use the card.

9. Claims 31 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schutten in view of Stern and Will.

10. It would have been obvious to one of ordinary skill in the art to utilize Braille on the magnetic card for the same reasons as described above.

Response to Arguments

11. Applicant's arguments filed October 12, 2004 have been fully considered but they are not persuasive.

12. Applicant argues that Schutten does not show visually aided instruction, however, as discussed in the above rejection, text is considered to be visual, and Applicant's specification describes the visually aided instruction as being text or symbols.

13. Applicant argues that Schutten is not foldable into substantially planar form because of the pouches. However, the claim language only requires the card to be foldable. The phrase "wallet sized" does not impart any restriction that the folded card be small, since some wallets are very large. Additionally, Applicant's card may include pouches, which would restrict folding, according to Applicant's own argument.

14. Regarding the use of symbols instead of text, it is all considered to be printed matter. The use of printed matter to convey instructions on using a product is not new or unobvious. As for the particular content of the printed matter, where sole distinction set out in claims over prior art is in printed matter, there being no new feature of

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physical structure and no new relation of printed matter to physical structure, such claims may not be allowed; it is only where claims define either new features of structure of new relations of printed matter to structure, or both, which new features or new relations give rise to some new and useful function, effect, or result, that the claims may be allowed. Ex parte GWINN, 112, USPQ 439 (BdApp&Int 1955).

15. Regarding the Stern reference, Schutten states that the device need only be flexible (column 2, line 29, among other places). Stern also indicates that the device is flexible (column 4 line 64). Items with such magnetic backing need not necessarily be bulky or stiff.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joanne Silbermann whose telephone number is 703-308-2091. The examiner can normally be reached on M-F 5:30 - 2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 703-308-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Joanne Silbermann
Primary Examiner
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JS